

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES COMMODITY FUTURES TRADING COMMISSION
AND THE
HONG KONG SECURITIES AND FUTURES COMMISSION
CONCERNING CONSULTATION
AND COOPERATION IN THE
ADMINISTRATION AND ENFORCEMENT OF
FUTURES LAWS

October 5, 1995

The Commodity Futures Trading Commission of the United States and the Hong Kong Securities and Futures Commission, recognizing the increasing international activity in the futures markets and the corresponding need for mutual cooperation as a means for improving their effectiveness in administering and enforcing the futures laws, regulations and rules of their respective countries, have reached the following understanding:

1: DEFINITIONS

For the purposes of this Memorandum of Understanding (Memorandum):

1.1 "Authority" means:

1.1.1 the United States Commodity Futures Trading Commission; or

1.1.2 the Hong Kong Securities and Futures Commission.

1.2 "Requested Authority" and "Requesting Authority" mean:

1.2.1 "Requested Authority" means an Authority to whom a request is made under this Memorandum; and

1.2.2 "Requesting Authority" means an Authority making a request under this Memorandum.

1.3 "person" means a natural person, unincorporated association, partnership, or body corporate; or a government, government subdivision, agency, instrumentality of a government, or any equivalent authority.

1.4 "futures business" means any person who is involved, in whole or in part, in effecting transactions in futures and options for the accounts of others or

soliciting such transactions; buying and selling futures and options for one's own account; advising others for compensation, either directly or through publications, writings or electronic media, as to the desirability of trading in, purchasing or selling futures and options; the management, promotion, offer or sale of any collective investment scheme; or equivalent activities conducted by persons; and includes persons acting in the capacity of trading advisors, pool operators, futures commission merchants, introducing brokers, associated persons, floor brokers, and floor traders.

- 1.5 "futures processing business" means a futures and/or options clearing organization.
- 1.6 "futures transaction" means a transaction in futures or options that is regulated or subject to regulation by the Authorities whether transacted on or subject to the rules of an exchange or market, or over-the-counter.
- 1.7 "laws", "regulations" and "rules" mean the provisions of the laws of the United States and Hong Kong and regulations promulgated thereunder, and rules promulgated by the Authorities, concerning:
 - 1.7.1 insider trading, misrepresentation or the use of fraudulent, deceptive or manipulative practices in connection with the offer, purchase or sale of any futures or options contract or the conduct of futures businesses or futures transactions;
 - 1.7.2 the duties of persons to comply with reporting requirements;
 - 1.7.3 the making of a false or misleading statement or any material omission

in any application or report made to the Authorities;

1.7.4 the duties of persons or futures businesses to make full and fair disclosure of information in connection with futures transactions;

1.7.5 the duties of futures businesses and futures processing businesses pertaining to their financial, operational or other requirements and their duties of fair dealing in the offer and sale of futures and options, the execution of transactions and the conduct of their businesses; and

1.7.6 the financial and other qualifications of those engaged in, or in control of, futures businesses or futures processing businesses.

The laws, regulations and rules identified in 1.7 represent examples of matters for which assistance will be available under this Memorandum and are not intended to limit the Memorandum as it may apply to other laws, regulations, rules and regulatory policies of the United States and Hong Kong concerning futures and options.

2: ESTABLISHMENT OF A FRAMEWORK FOR CONSULTATION REGARDING MATTERS OF MUTUAL INTEREST

The Authorities intend to consult periodically about matters of mutual interest in order to enhance cooperation and to protect investors by ensuring the stability, efficiency, and integrity of the futures and options markets of the United States and Hong Kong; the coordination of market oversight; and the administration of United States and Hong Kong futures laws, regulations and rules. The purpose of such consultations is to assist in the development of mutually agreeable approaches for strengthening the futures and options markets of the United States and Hong Kong while avoiding, whenever possible, conflicts that

may arise from the application of differing regulatory practices.

3: MUTUAL ASSISTANCE FOR THE EXCHANGE OF INFORMATION

3.1: SCOPE OF ASSISTANCE

3.1.1 The Authorities will provide the fullest mutual assistance, to the extent permitted by the laws of the United States and Hong Kong, within the framework of this Memorandum. Such assistance will be provided to facilitate the enforcement of the laws, regulations or rules applicable to: futures and options transactions, markets and their members; market surveillance and oversight; futures processing businesses; the granting of licenses, authorizations, waivers or exemptions for the conduct of futures businesses; and the conduct of investigations, litigation or prosecutions where information located within the jurisdiction of the Requested Authority is needed to determine whether, or to prove that, the laws, regulations or rules of the Requesting Authority may have been violated.

3.1.2 Assistance available pursuant to this Memorandum includes, but is not limited to:

- (a) providing access to information in the files of the Requested Authority;
- (b) taking testimony and statements of persons; and
- (c) obtaining information and documents from persons.

3.2: GENERAL PRINCIPLES FOR PROVIDING ASSISTANCE

- 3.2.1 This Memorandum sets forth a statement of intent of the Authorities to establish a framework for mutual assistance and to facilitate the exchange of information between the Authorities to enforce or secure compliance with the laws, regulations or rules of their respective jurisdictions, as defined herein.
- 3.2.2 This Memorandum does not modify or supersede any laws, regulations or rules in force in, or applying to, the United States or Hong Kong. This Memorandum does not create any legally enforceable rights or impose any legally binding obligations. This Memorandum does not affect any arrangements under other Memoranda to which either Authority may be a party.
- 3.2.3 The Authorities recognize the need for and desirability of providing mutual assistance and exchanging information to assist each other in securing compliance with their respective laws, regulations or rules. A request for assistance may be denied, however, by the Requested Authority:
- (a) where the request would require the Requested Authority to act in a manner that would violate its laws;
 - (b) where the request is not in accordance with the provisions of this Memorandum; or
 - (c) on grounds of public interest.

Where a request for assistance is denied or opposed, or where assistance is not available under the law of the Requested Authority, the Requested Authority will provide the reasons why the assistance is not being granted, and consult pursuant to 3.7.

3.3: REQUESTS FOR ASSISTANCE

3.3.1 Requests for assistance will be made in writing and addressed to the Requested Authority's contact officer listed in Appendix A.

3.3.2 Requests will specify:

- (a) a general description of both the subject matter of the request and the purpose for which the assistance or information is sought;
- (b) a general description of the assistance, documents, information, testimony, or statements of persons sought by the Requesting Authority;
- (c) any information in the possession of the Requesting Authority that might assist the Requested Authority in identifying the persons believed by the Requesting Authority to possess the information sought, or the places where such information may be obtained;
- (d) the provisions of laws, regulations or rules pertaining to the matter that is the subject of the request and the role of the Authority in relation to the administration or enforcement of such laws, regulations or rules;

- (e) to whom, if anyone, other than those bodies listed in Appendix B, onward disclosure is likely, and the reasons for such disclosure; and
- (f) the desired time period for the reply.

3.3.3 In urgent circumstances, a request for assistance and a reply to such request may be effected by summary procedures, such as by means of communication other than the exchange of letters, provided that all such communications are confirmed in writing in the manner prescribed in 3.3.

3.4: EXECUTION OF REQUESTS

3.4.1 Access to information held in the files of the Requested Authority will be provided upon the request of the Requesting Authority pursuant to the procedures set forth in 3.3.

3.4.2 When requested by the Requesting Authority, the Requested Authority will take the testimony or statements of persons involved, directly or indirectly, in the activities underlying the request, or possessing information that may assist in carrying out the request. The Requested Authority also may require the production of other evidence from any other person to the extent necessary to satisfy the request. The Requesting Authority may, in its discretion, request the taking of the testimony or statements of specific persons.

3.4.3 The obtaining of testimony or statements and the gathering of

documents in response to a request under this Memorandum will be conducted in accordance with the procedures of the Requested Authority and by persons designated by the Requested Authority, unless otherwise agreed by the Authorities.

- 3.4.4 Notwithstanding 3.4.3, when the Requesting Authority believes it is necessary, testimony or statements will be taken under oath or affirmation and a transcript will be made. In addition, a representative of the Requesting Authority may be present at the taking of testimony or statements and may prescribe, to a designated representative of the Requested Authority, specific questions to be asked of any witness.
- 3.4.5 Notwithstanding any other provision of this Memorandum, any person providing testimony, statements, information, or documents as a result of a request made under this Memorandum will be entitled to all the applicable rights and privileges of the laws of the Requested Authority. Assertions regarding rights and privileges arising exclusively pursuant to the laws of the Requesting Authority will be preserved for consideration by the courts in the Requesting Authority.
- 3.4.6 In addition to participating in the taking of testimony or statements pursuant to 3.4.4, the Requesting Authority may submit to the Requested Authority a request, with reasons, that a person or persons designated by the Requesting Authority be permitted to conduct the testimony or take a statement of any person.

- (a) The request may be granted, modified or denied by the Requested Authority in its discretion.
- (b) Where the Requested Authority grants a request which specifies that the law of the Requesting Authority requires the opportunity for counsel for the witness or any party to the proceeding to pose questions to the witness, the Requested Authority will use its best efforts to ensure that such an opportunity will be given.
- (c) 3.7 applies to the denial of a request referred to in 3.4.

3.5: PERMISSIBLE USES OF INFORMATION

3.5.1 The Requesting Authority may use the information furnished solely:

- (a) for the purposes stated in the request with respect to ensuring compliance with, or enforcement of, the laws, regulations or rules of the Requesting Authority, including the legal provisions specified in the request and related provisions; and
- (b) for the purposes within the general framework of the use stated in the request, including conducting a civil or administrative enforcement proceeding, assisting in a self-regulatory organization's market surveillance, market oversight or enforcement proceeding, assisting in a criminal prosecution, or conducting any investigation related thereto for any general charge applicable to the violation of the provisions specified in the request.

3.5.2 In order to use the information furnished for any purpose other than those stated in 3.5.1, the Requesting Authority will first notify the Requested Authority of its interest in such use. The Requested Authority will advise its views within 14 days and, if necessary, the Authorities will consult pursuant to the provisions of 3.7 to ensure full consideration of both their views on the proposed use. Fourteen day advance notification need not be provided where disclosures are made to persons having the legal power to compel disclosure; in such cases, notification will be provided according to 3.6.4.

3.6: CONFIDENTIALITY OF REQUESTS AND INFORMATION

- 3.6.1 To the extent permitted by law, except for disclosures in accordance with 3.5, including disclosures to those persons listed in Appendix B, and disclosures that are absolutely necessary to carry out the request:
- (a) each Authority will keep confidential requests made under this Memorandum, the contents of such requests, and any other matters arising during the operation of this Memorandum, including consultations between the Authorities, and unsolicited assistance; and
 - (b) the Requesting Authority will keep confidential any information received from the Requested Authority pursuant to this Memorandum.

- 3.6.2 When a Requesting Authority discloses information to another person, the Requesting Authority will obtain an undertaking from the other person that it will maintain the confidentiality of the information, except when disclosure is required pursuant to a legally enforceable demand.
- 3.6.3 Except as contemplated by 3.5, the Requesting Authority will not offer the information to, and shall use its best efforts to ensure that it is not obtained by, any other person. To ensure confidentiality of any information provided by a Requested Authority in response to a request under this Memorandum, where appropriate, the Requested Authority will in good faith determine and represent that such public disclosure of the information would violate its laws. Unless otherwise agreed, if such information is obtained by any other person the Requesting Authority will use its best efforts to ensure that such information will not be used by that person in any way that involves disclosure to any other person.
- 3.6.4 The Requesting Authority will notify the Requested Authority of any legally enforceable demand for information prior to complying with the demand, and will assert such appropriate legal exemptions or privileges with respect to such information as may be available.
- 3.6.5 In response to a request by the Requested Authority, and to the extent permitted by law, as soon as the Requesting Authority has terminated the matter for which assistance has been requested under this Memorandum or the material provided is no longer required for the

conduct of the matter, it will return to the Requested Authority all documents and copies thereof not already disclosed in proceedings referred to in 3.5 and all other material disclosing the contents of such documents, other than material that is generated as part of the investigative, deliberative or internal analytical process of the Requesting Authority.

3.7: CONSULTATION REGARDING MUTUAL ASSISTANCE PURSUANT TO THIS MEMORANDUM

3.7.1 In any case of dispute over the meaning of any term used in this Memorandum, the Authorities will define such term in accordance with the relevant laws, regulations or rules of the Requesting Authority.

3.7.2 The Authorities will consult with each other regarding this Memorandum with a view to improving its operation and resolving any matters that may arise. In particular, the Authorities will consult upon request in the event of:

- (a) a denial by one Authority of, or opposition by one Authority to, a request or proposal made by the other Authority pursuant to this Memorandum; or
- (b) any circumstance that makes it necessary or appropriate to amend or extend this Memorandum in order to achieve its purposes, such as a change in market or business conditions, or a change in the legislation governing the matters set forth in 1.7.

3.7.3 The Authorities may agree on such practical measures as may be necessary to facilitate the implementation of this Memorandum.

3.7.4 Any of the conditions of this Memorandum may be amended, relaxed, or waived by mutual agreement.

3.8: UNSOLICITED ASSISTANCE

To the extent permitted by their respective laws, each Authority will use reasonable efforts to provide the other Authority with any information it discovers that gives rise to a suspicion of a breach, or anticipated breach, of the laws of the other Authority.

3.9: COSTS OF INVESTIGATION

The Requested Authority may, as a condition of agreeing to give or continuing to give assistance under the Memorandum, require the Requesting Authority to make a contribution to costs. Such a contribution may, in particular, be required where the cost of satisfying a request is or is likely to be substantial, or where a substantial imbalance has arisen in the cumulative costs incurred as a consequence of satisfying two or more requests.

4: FINAL PROVISIONS

4.1: EFFECTIVE DATE

Cooperation in accordance with this Memorandum will begin on the date of its signing by the Authorities.

4.2: TERMINATION

Cooperation in accordance with this Memorandum will continue until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to

SECRET

Tel: (852) 2842-7605 - direct
or (852) 2840-9222 or 2842-7666 - switchboard
Fax: (852) 2521-7929

APPENDIX B

For the CFTC:

U.S. Department of Agriculture

U.S. Department of Justice

U.S. Securities and Exchange Commission

U.S. Department of Treasury

Federal Banking Authorities (*e.g.*, Board of Governors of the Federal Reserve System, Comptroller of the Currency, Federal Deposit Insurance Corporation)

Attorney general of any State and State criminal authorities

Administrator of securities laws of any State or such other official as a State may designate for the purpose of administering its futures and options laws

State Bar associations

State licensing organizations for professionals

Self-regulatory organizations subject to the CFTC's jurisdiction (*e.g.*, National Futures Association or a designated contract market)

For the SFC:

The Financial Secretary and the Financial Services Branch

Inspectors appointed by the Financial Secretary

Hong Kong Monetary Authority

Independent Commission Against Corruption

Royal Hong Kong Police Force

The Attorney-General's Chambers

The Stock Exchange of Hong Kong

Hong Kong Futures Exchange Ltd.

Insider Dealing Tribunal

discontinue the cooperation. If either Authority gives such notice, cooperation in accordance with this Memorandum will continue with respect to all requests for assistance that were made before the effective date of notification until the Requesting Authority terminates the matter for which assistance was requested.

Signed at Washington, DC

this 5th day of October, 1995

FOR THE COMMODITY FUTURES
TRADING COMMISSION OF THE
UNITED STATES:

Mary L. Schapiro
Mary L. Schapiro
Chairman

this 5th day of October, 1995

FOR THE HONG KONG SECURITIES
AND FUTURES COMMISSION:

Anthony Neoh
Anthony Neoh
Chairman